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UNITED STATES OF AMERICA

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 1077

WILLIAM GRANADY,

Petitioner,

vs.

DETROIT STEEL STEEL WORKS, a Michigan corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

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Chronicle Brief & Record Co., 121 Woodward Ave., Detroit

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PETITION FOR WRIT OF CERTIORARI

TO the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

SUMMARY STATEMENT OF MATTER INVOLVED

(Figures in parentheses refer to pages of the printed record, except as the context clearly indicates otherwise.)

The question presented in this case involves the definition of "executive," as such definition is promulgated by the Wage and Hour Administrator, under the exempting provisions of the Fair Labor Standards Act of 1938 (52 Stat. 1060; Title 29 U.S.C., Sec. 201, et seq).

Purpose of the Act

"* * * * The manifest declared purpose of the statute was to eradicate from interstate commerce the evils attendant upon low wages and long hours of service and industry. * * *"

Fleming vs. Hawkeye - 113 F. 2d 52, p. 56.

Prima Facie Coverage and Exemptions Under the Act

Sections 6 and 7 of said Act provide for compensation of laborers at the rate of time and a half for all time in excess of 40 hours per week:

> "No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in production of goods for commerce - -
>
> > for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."
>
> *Fair Labor Standards Act, Sec.* 7 (a) (3).

Prima facie a laborer is entitled to compensation as provided in the foregoing section of the Act unless he is a bona fide executive and thereby excluded from the protection of the Act as provided therein:

> "The provisions of Sections 6 and 7 shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator);"
>
> *Fair Labor Standards Act*, Sec. 13 (a) (1).

The Wage and Hour Administrator, pursuant to Sec. 13 (a) (1) above, defined the term "employee employed in a bona fide executive * * * capacity" by enumerating six conditions which, if existing in the conjunctive, classify an employee as an executive, thereby excluding him from the benefits of the Act.

SECTION 541.1 — EXECUTIVE.

The term "employee employed in a bona fide executive * * * capacity" in section 13 (a) (1) of the act shall mean any employee —

(A) whose primary duty consists of the management of the establishment in which he is employed or of a customarily recognized department or subdivision thereof, and

(B) who customarily and regularly directs the work of other employees therein, and

(C) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, and

(D) who customarily and regularly exercises discretionary powers, and

(E) who is compensated for his services on a salary basis at not less than $30 per week (exclusive of board, lodging, or other facilities), and

(F) whose hours of work of the same nature as that performed by nonexempt employees do not exceed 20 percent of the number of hours worked in the workweek by the nonexempt employees under his direction; provided that this subsection (F) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment.

(5 F.R. 4077)

Petitioner's Claim

Petitioner claims that because he was an employee working exclusively at manual labor, having no voice in business policy or management, the definition of the Administrator does not exclude him from the benefits of the Act under subsections (A), (B), (C), (D) and (F) of the Administrator's Regulations above.

Summary of Evidence

Petitioner filed this suit in the District Court for the Eastern District of Michigan, Southern Division, to recover overtime compensation for an excess of 32 hours per week over and above regular time of 40 hours per week, from October 13, 1944, to May 12, 1945. (14) During this period the defendant corporation was fulfilling a contract with the United States Government for the manufacture of war materials, one phase of such production being the painting of ammunition carriers. (14) The defendant did not have space or painting equipment in its main plant for this operation, and accordingly set up a paint shop in a garage nine miles distant from the main plant (19) and operated under the defendants corporate name. (34)

Petitioner's duties required him to see that the paint shop operated in a proper and efficient manner, to use his own judgment and discretion as to which of his helpers should work on any particular piece of work, how many hours each of his helpers should work, and to route the work every day, and customarily directed the work of the men hired to work in the paint shop. (20)

Petitioner looked after everything for the successful operation of the paint shop, such as keeping materials on hand,

(such materials having been obtained through defendant's purchasing agent at the main plant). His testimony that he worked at manual labor one hundred per cent of the time (34) was uncontroverted. (60) His manual labor consisted of spraying, cleaning, painting, taking off ovens, placing stock on the line, and removing stock from the line, loading trucks, unloading trucks, (52) handing-washing the parts with solvent, (37) cleaning the spray booth, working on the bonderizing tank, cleaning up the shop, unloading paint, (54) lifting sections weighing 150 pounds onto a carrier to paint them, taking them off the carrier by hand for storage, and pouring paint out of barrels into the tank. (56)

The defendant, not the petitioner, hired the full-time employees in the paint shop, while petitioner hired and made the rate of pay for the part-time employees only. (20 & 34) The largest number of part-time employees working in the paint shop with petitioner at any one time was four; the largest number of full-time men at any time was two; the largest number working at any one time was five. (34)

Petitioner worked alone at times, (37) and frequently until 10 or 11 o'clock at night to meet a production schedule. (32 & 33)

The government contract was terminated on May 12, 1945, and the garage paint shop dismantled during the following summer. (24)

Findings of District Court

The trial court made findings of fact that the paint shop was a physically separated branch establishment of the defendant and that petitioner was in sole charge thereof (8) (58) (59), and made findings of law that the petitioner was an executive because he was in sole charge of all activities of

a physically separated branch establishment of the defendant corporation, that he supervised all activities carried on at such establishment, that every employee of such establishment was under his supervision, that his primary duty was that of management, and of supervision, of such establishment, and that he customarily and regularly directed the work of other employees therein; that his suggestions as to hiring and firing were given particular weight, that he customarily and regularly exercises discretionery powers, and that he was compensated on a salary basis, and that therefore the provisions of the Act did not apply to him. (8)

Judgment of no cause of action was entered by the District Court upon his findings on February 20, 1946. (9)

Judgement of Court Below

The Circuit Court of Appeals for the Sixth Circuit rendered judgment without opinion affirming the decision of the District Court. (69)

JURISDICTIONAL STATEMENT

Jurisdiction of this Court is based on Sec. 240 of the Judicial Code, as amended. (28 U.S.C., Sec. 347)

QUESTIONS PRESENTED

I.

Was there error, under the Administrator's definition, in finding that the primary duty of the Petitioner was management, when he had no voice in business policy or management, but worked exclusively at manual labor?

II.

Was the Petitioner's status of a laborer changed to that of an executive because the shop wherein he worked was geographically apart from the main plant of his employer?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

The United States Circuit Court of Appeals for the Sixth Circuit "has decided an important question of Federal law, which has not been, but should be, settled by the Supreme Court."

Supreme Court Rule 38 (5) (d)

This is the first case in which any court has held that a laborer, for whose protection the Fair Labor Standards Act was designed, performing one manual operation in a synchronized mass production, is exempt from the protection of the Act because such worker is compelled by the employer to perform his services in a location geographically separated from the main plant of the employer.

Under the Court's interpretation of sub-section (F) of the Administrator's Regulations many thousands of working foremen and working supervisors in mass production indus-

tries throughout the United States, situated similarly to petitioner, will be adversely affected and deprived of the benefits of the Act.

> WORKING FOREMEN AND WORKING SUPERVISORS
>
> "* * * Among the employees typically excluded from the exemption by such limitation are working foremen (as for example in tanneries and in press rooms or print shops), local superintendents of public utility companies, head mail clerks, head bookkeepers, terminal managers of bus and trucking companies, and file room supervisors. It will be noted that a number of these occupations involve employees who are in charge of a physically separated branch establishment or a small independent establishment."
>
> *Report and Recommendations of the Presiding Officer at Hearings Preliminary to Redefinition — p. 15. (Stein Report)*

The findings of the District Court, as affirmed by the Circuit Court of Appeals for the Sixth Circuit, is diametrically opposed to the purpose of the Act, and arbitrarily places a manual laborer in the exempt classification. Upon the basis of this decision employers are enabled to evade the Act by requiring their laboring employees to perform their respective services in numerous geographically separated small shops, thus nullifying the very purpose of the Act.

Wherefore your petitioner prays that a Writ of Certiorari be issued under the seal of this Court, directed to the Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and the proceedings of said Circuit Court of Appeals had in the case numbered and entitled on its docket, "No. 10285, William Chanady, Plaintiff and Appellant, v. Detroit Sheet Metal Works, a Michigan corporation, Defendant and Appellee," to the end that this cause

may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the decree of said Circuit Court of Appeals be reversed by this Court, and such further relief be granted as to this Court may seem proper.

Respectfully submitted,

WARREN E. MILLER.

Dated: Detroit, Michigan, February 25, 1947.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINION OF THE COURT BELOW

The Circuit Court of Appeals for the Sixth Circuit, without opinion, entered a judgment affirming the decision of Dithe District Court for the Eastern District of Michigan, Southern Division. (69)

JURISDICTION

The Circuit Court of Appeals in this case has decided "an important question of Federal law which has not been, but should be, decided by this Court."

Supreme Court 38 (5) (d)

STATEMENT OF CASE

Reference is made to the Petition for Writ of Certiorari for a statement of the case and issues involved.

ASSIGNMENTS OF ERROR

The Circuit Court of Appeals for the Sixth Circuit erred in affirming the finding of the District Court that the Petitioner was employed by the defendant in a "bona fide executive * * * capacity," and therefore excluded from the benefits of the Fair Labor Standards Act.

ARGUMENT

IMPORTANCE OF QUESTION OF FEDERAL LAW INVOLVED

We respectfully refer the Court to the Reasons Relied Upon for Allowance of Writ contained in the Petition for Writ of Certiorari.

THE PURPOSE AND CONSTRUCTION OF THE ACT AND EXEMPTIONS THEREUNDER

The Fair Labor Standard Act is designed to protect workers who are manual laborers, as distinguished from the "white collar" or executive class of employees. Prima facie, all manual laborers are entitled to the benefits of sections 6 and 7 of the Act. Only those who are executives, as defined by the Administrator, are exempt from the benefits of the Act. The statute, being remedial with a humanitarian end in view, must be given a liberal construction, and the exemptions under the Act (section 13(a)(1)) must be given a narrow construction in order to effectuate the avowed intention of the Congress.

In *Fleming vs. Hawkeye Pearl Button Co.* 113 F. 2d 52, the Circuit Court of Appeals for the Eighth Circuit, construing the exemptions under the Act, quoted from *Heydenfeldt vs. Daney Gold Min. Co.* 93 U.S. 634, 638; 23 L. Ed. 995:

> "If a literal interpretation of any part of it (a statute) would operate unjustly, or lead to absurd results and be contrary to the evident meaning of the Act taken as a whole, it will be rejected; and there is no better way of discovering the true meaning of a law when there are expressions in it which are

rendered ambiguous by their connection with other clauses, than by considering the necessity for it, and the causes which induced the Legislature to pass it. * * *"

In the same case the Court further said:

"* * * The manifest declared purpose of the statute was to eradicate from interstate commerce the evils attendant upon low wages and long hours of service and industry. Accepting this as the declared purpose of the Act, exemptions would tend to defeat its purpose. The statute is remedial, with a humanitarian end in view. It is therefore entitled to a liberal construction. *Grier v. Kennan*, 8 Cir. 64 F. 2d 605."

Quoting further from the same case relative to other examptions from the Act:

"Section 13 (a) (5) creates an exception to the general scope of the Act, and hence is subject to strict construction. *Thompson v. United States*, 8 Cir., 258 F. 196; *United States v. Maryland Casualty Co.* 7 Cir., 49 F. 2d 556; *United States v. Dickson*, 15 Pet. 141, 165, 10 L. Ed. 689. In the last cited case it is said: "In short, a proviso carves special exceptions only out of the evacting clause; and those who set us any such exception, must establish it as being within the words as well as within the reason thereof."

Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52, 55, 56.

We have set forth the Administrator's Regulations on page 4 of the Petition for Writ of Certiorari. All of the conditions enumerated by the Administrator must be found to exist in the conjunctive in order to exclude an employee from the benefits of the Act.

Helliwell v. Haberman, 140 F. 2d. 833;

Fanelli v. U. S. Gypsum Co., 141 F. 2d. 216;

Stranger v. Glenn L. Martin Co., 56 Fed. Supp. 163.

The burden of showing exemption from the protection of the Act is upon the defendant.

Stranger v. Vocafilm, 151 F. 2d. 896;

Ispass v. Pyramid Motor Fgt., 152 F. 2d. 621;

Fletcher v. Grinnell, 150 F. 2d. 339

Whether an employee is an executive so as to exempt him from the protection of the Act is determined from his activities, rather than from any name attributed to the position.

Steiner v. Pleasantville Constructors, 46 N.Y.S. 2d. 120

Concededly Sub-sections (B), (C), and (D) of Section 541.1 of the Administrator's Regulations might, in the proper setting, be equally as applicable to a craftsman, or a working foreman directing his assistants, as to an executive directing the activities of his office, or managerial, staff.

It is the Court's interpretation of Sub-sections (A) and (F) of the regulations which petitioner contends is clearly erroneous.

THE NATURE OF PETITIONER'S WORK DID NOT EXEMPT HIM UNDER SEC. 541.1 (A)

The facts show that the Petitioner's duties, in addition to directing from two to five assistants, consisted exclusively of manual labor. He worked one hundred per cent of his time at manual labor (34). This was not rebutted (60).

If the Petitioner's primary duty was manual labor, then it could not have been management. The uncontroverted testimony shows that the Petitioner's primary duty was that of a manual laborer, and it therefore follows that the Distric Court was in error in holding, and the Circuit Court of Appeals in error in affirming, that Petitioner was an executive, as defined under Sub-section (A).

PETITIONER WAS NOT EXEMPT UNDER SEC. 541.1 (F)

The petitioner was non-exempt (a worker) under Sub-section (F) because he worked more than 20 percent of the hours worked by non-exempt employees (his helpers) under his direction except for the proviso that Sub-section (F) "shall not apply in the case of an employee who is in sole charge of an independent establishment, or a physically separated branch establishment."

We submit that under this portion of the section the decision of the Court below, affirming the finding of the District Court, was clearly erroneous for the reason that, to exempt the Petitioner, exclusively performing manual labor, is contrary to the intention of the Congress, and for the further reason that the paint shop wherein Petitioner worked was not "an independent branch establishment."

Establishment, relative to exemptions under Sec. 13 (a) (2) of the Act, which we think is analagous and applicable, has been defined by the Circuit Court of Appeals for the Tenth Circuit, as follows:

> "* * * Establishment — — That which is established as * * * (d) the place where one is permanently fixed for residence or business; * * * an institution or place of business, with its fixtures and organized staff, as large establishments, a manufacturing estab-

lishment." Since this definition begins with the words, "That which is established," to arrive at the full meaning intended by the lexicographer we must investigate the meaning of the word 'established,' which is — — 'To make stable or firm; to fix immovably and finally. * * *' And we must look for the definition of the word "stable," which is '(1) Firmly established; * * *; solid; fixed; steadfast * * * (3) durable * * * abiding; persisting, enduring. * * *"

"It seems to us then that the words "retail * * * establishment," whatever they may not include, certainly do include a business enterprise confined to four units in a single city and one unit in another, all retail stores, all under a single management. We cannot believe that one establishment, occupying a city block is four establishments, because there is an entrance on each side of the square, four entrances. We cannot believe that one establishment is two establishments, because an alley or a street may divide one part from another. We cannot believe that one establishment is four establishments, because, for the greater convenience of customers, there are four separate locations in the same city, in each of which the same character of business is transacted, all under the guidance of a single management."

Walling, Admr. Wage and Hour Div'n v. Fred Wolferman, Inc., 54 F. Supp. 917, 918.

Appeal Dismissed 144 F. 2d 354

The petitioner was compelled to work in a paint shop, established in a garage nine miles distant from the main plant of his employer because of the scarcity of space in the main plant. This paint shop was purely temporary, having been opened in October of 1944, and dismantled seven months later.

The Supreme Court of Michigan has held, relative to claims for unemployment compensation occasioned by strikes, that nine essentially co-ordinating plants of the Chrysler Corporation, geographically separated within the City of Detroit, employing collectively in excess of fifty thousand men, were not separate establishments, but constituted one establishment.

Chrysler Corp'n v. Smith, 297 Mich. 438.

The Supreme Court of Wisconsin, in the same type of case, has held that one plant in Kenosha, and one in Milwaukee, forty miles apart, constituted a single establishment.

Spielman v. Industrial Commission

236 *Wis.* 240 (295 N.W. 1).

CONCLUSION

Petitioner therefore submits that the holding in this case, classifying a manual laborer as an executive, is contrary to the expressed purpose and intention of the Congress, is a violation of the spirit of the law, and is not in accord with the proper construction of the Administrator's definition, and particularly sub-sections (A) and (F) thereof, and that the Circuit Court of Appeals was in error in affirming the findings of the District Judge.

It is therefore respectfully submitted that the importance of the questions involved to the workers of the nation, and the evils attendant upon a narrow construction of the Act and a broad construction of the exemptions require a full and complete hearing by this Court and a reversal of the judgment of the Circuit Court of Appeals.

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